

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JEREMY GAY as the Wrongful Death Personal Representative of the ESTATE OF RODNEY LYNCH, RHONDA LYNCH, Individually and on behalf of L.N.L., a Minor Child, SHENALE LEANN TSO, Individually, MELANIE LYNN LYNCH, Individually, and AMBER REE LYNCH, Individually,

Plaintiffs,
vs. No. 1:21-cv-00604-JCH-KK

JUSTIN OLVERA, in his individual capacity, ELIJAH BOWMAN, in his individual capacity, CITY OF GALLUP, a Municipal Corporation of the State of New Mexico, and GALLUP POLICE CHIEF FRANKLIN BOYD,

Defendants.

DECLARATION OF SCOTT A. DEFOE

1. I, Scott A. DeFoe declare, and state as follows:
2. I am an expert that specializes in police procedures, security procedures, tactics, use of less than lethal force, use of lethal force and various other matters pertaining to law enforcement. I had a 28 year-law enforcement career where I investigated over 100 Use of Force incidents. During my law enforcement career, I received over 100 commendations to include the Medal of Valor, Police Star and Purple Heart. I have been retained as a police practices and use of force expert on over 450 cases throughout the United States and many of those matters involve positional asphyxiation, restraint asphyxiation, compressional asphyxiation, and the use of neck restraints. I was retained as an expert in this case on July 24, 2020. (CV available upon request)

Exhibit "F"

3. I make this declaration based on my extensive law enforcement training, professional experience, personal experience, review of the materials provided via discovery and includes depositions of Franklin Boyd, Steven Collins, Matthew Graham, Billy Padavich, Neil Yazzie and their exhibits, review of the Gallup Police Department's Policies, videos of the incident that is the subject of this lawsuit; starting at the initial contact Officer Elijah Bowman had with Mr. Rodney Lynch through the incident at NCI and my expertise as a court qualified and certified police practices and use of force expert.

4. It Is my opinion based on my review of the facts, videos and testimony in this matter, the incident at NCI that led to the death of Mr. Rodney Lynch could have been prevented if Officer Elijah Bowman had followed the Gallup Police Department's Policies and Procedures. Officer Elijah Bowman used force to prevent Mr. Rodney Lynch from walking away and to get Mr. Rodney Lynch on the ground at the JC Penney location. According to Gallup Police Department Policies, Mr. Rodney Lynch should have been transferred to the sworn police officer who arrived on scene.

5. After getting Mr. Rodney Lynch into his van at the JC Penney location, Officer Elijah Bowman had a ride along text Officer Justin Olvera to meet him at NCI because Mr. Rodney Lynch was "unruly." Officer Elijah Bowman failed to follow proper procedures by sending a text asking for help. Upon arriving at NCI, a sworn police officer(s) should have been available to assist with Mr. Rodney Lynch, if Officer Elijah Bowman had followed proper procedures and requested for assistance via central dispatch and allow the assistance to arrive prior to opening the doors to the transport vehicle.

7. Officers Elijah Bowman and Justin Olvera used inappropriate, unreasonable, and excessive force on Mr. Rodney Lynch after he exited the van.

8. There were no reasonable grounds to use such inappropriate, unreasonable, and excessive force on Mr. Rodney Lynch as Mr. Rodney Lynch had not committed a crime, Mr. Rodney Lynch did not pose an immediate threat to safety of Officers Justin Olvera and Elijah Bowman nor was Mr. Rodney Lynch actively resisting arrest to a degree or attempting to flee that would necessitate the use of such inappropriate, excessive, and unreasonable force that ultimately led to the death of Mr. Rodney Lynch.

9. Officers Elijah Bowman and Justin Olvera failed to properly request additional resources and failed to properly de-escalate and defuse the situation but used inappropriate, excessive, and unreasonable force that led to the unnecessary death of Mr. Rodney Lynch.

10. The Gallup Police Department failed to properly train Officer Elijah Bowman, Officer Justin Olvera, and Sergeant Martinez-Collins in the following areas: De-escalation and Defusing techniques, Basic Physiology of the Struggle, Neck Restraints, Compressional Asphyxiation, Positional Asphyxiation and Restraint Asphyxiation prior to the unnecessary death of Mr. Rodney Lynch.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 23, 2021, at Huntington Beach, California.



Scott A. DeFoe